

(1) The Contractor agrees to a waiver of liability pursuant to which it waives all claims against any of the entities or persons listed in paragraphs (c)(1)(i) through (c)(1)(iv) of this clause based on Damage arising out of Protected Space Operations. This cross-waiver shall apply only if the person, entity, or property causing the Damage is involved in Protected Space Operations and the person, entity, or property damaged is damaged by virtue of its involvement in Protected Space Operations. The waiver shall apply to any claims for Damage, whatever the legal basis for such claims, against:

- (i) A Party;
- (ii) A Party to another NASA Agreement or contract that includes flight on the same Launch Vehicle;
- (iii) A Related Entity of any entity identified in paragraphs (c)(1)(i) or (c)(1)(ii) of this clause; or
- (iv) The employees of any of the entities identified in (c)(1)(i) through (iii) of this clause.

(2) The Contractor agrees to extend the cross-waiver of liability as set forth in paragraph (c)(1) of this clause to its own subcontractors at all tiers by requiring them, by contract or otherwise, to:

- (i) Waive all claims against the entities or persons identified in paragraphs (c)(1)(i) through (c)(1)(iv) of this clause; and
- (ii) Require that their Related Entities waive all claims against the entities or persons identified in paragraphs (c)(1)(i) through (c)(1)(iv) of this clause.

(3) For avoidance of doubt, this cross-waiver of liability includes a cross-waiver of claims arising from the *Convention on International Liability for Damage Caused by Space Objects*, entered into force on 1 September 1972, in which the person, entity, or property causing the Damage is involved in Protected Space Operations and the person, entity, or property damaged is damaged by virtue of its involvement in Protected Space Operations.

(4) Notwithstanding the other provisions of this clause, this cross-waiver of liability shall not be applicable to:

- (i) Claims between the Government and its own contractors or between its own contractors and subcontractors;
- (ii) Claims made by a natural person, his/her estate, survivors, or subrogees (except when a subrogee is a Party to an Agreement or is otherwise bound by the terms of this cross-waiver) for bodily injury to, or other impairment of health, or death of such person;
- (iii) Claims for Damage caused by willful misconduct;
- (iv) Intellectual property claims;
- (v) Claims for damages resulting from a failure of the contractor to extend the cross-waiver of liability to its subcontractors and related entities, pursuant to paragraph (c)(2) of this clause; or

(vi) Claims by the Government arising out of or relating to a contractor's failure to perform its obligations under this contract.

(5) Nothing in this clause shall be construed to create the basis for a claim or suit where none would otherwise exist.

(6) This cross-waiver shall not be applicable when 49 U.S.C. Subtitle IX, Chapter 701 is applicable.

[77 FR 59342, Sept. 27, 2012]

1852.228-80 Insurance—Immunity From Tort Liability.

As prescribed in 1828.311-270(b), insert the following provision:

INSURANCE—IMMUNITY FROM TORT LIABILITY (SEP 2000)

If the offeror is partially or totally immune from tort liability to third persons as a State agency or as a charitable institution, the offeror will include in its offer a representation to that effect. When the successful offeror represented in its offer that it is immune from tort liability, the following clause(s) will be included in the resulting contract:

(a) When the offeror represents that it is partially immune from tort liability to third persons as a State agency or as a charitable institution, the clause at FAR 52.228-7, Insurance—Liability to Third Persons, and the associated NFS clause 1852.228-81, Insurance—Partial Immunity From Tort Liability, will be included in the contract.

(b) When the offeror represents that it is totally immune from tort liability to third persons as a State agency or as a charitable institution, the clause at NFS 1852.228-82 Insurance—Total Immunity From Tort Liability, will be included in the contract.

(End of provision)

[65 FR 54440, Sept. 8, 2000]

1852.228-81 Insurance—Partial Immunity From Tort Liability.

As prescribed in 1828.311-270(c), insert the following clause:

INSURANCE—PARTIAL IMMUNITY FROM TORT LIABILITY (SEP 2000)

(a) Except as provided for in paragraph (b) of this clause, the Government does not assume any liability to third persons, nor will the Government reimburse the contractor for its liability to third persons, with respect to loss due to death, bodily injury, or damage to property resulting in any way from the performance of this contract; and

(b) The contractor need not provide or maintain insurance coverage as required by